STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2017-207-E

In the Matter of:	)	
Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent	)	RESPONSE TO ORDER NO. 2017-637

The South Carolina Coastal Conservation League ("CCL") submits this response to the Public Service Commission of South Carolina's ("Commission") Order No. 2017-637, requesting that parties in Dockets 2017-207-E and 2017-305-E file briefs "communicating their positions on how best to coordinate the two proceedings." CCL supports the Sierra Club and Friends of the Earth's request that pre-hearing discovery be revived in Docket 2017-207-E and believes that discovery in 2017-207-E should be coordinated with discovery in 2017-305-E.

FACTUAL BACKGROUND

On June 22, 2017, Friends of the Earth and Sierra Club filed a complaint pursuant to South Carolina Code sections 58-27-960, 58-27-1930, 58-33-275(E) and Commission Rules 103-824 and 103-825 requesting a proceeding to: a) determine the prudence of SCE&G's acts or omissions in connection with building two new nuclear units at the V.C. Summer plant, b) determine the prudence of abandoning the units as well as the prudence of available least-cost efficiency and renewable energy alternatives, and c) require SCE&G to remedy, abate, and make reparations for unjust and unreasonable rates charged to ratepayers for the new units.

CCL filed a petition to intervene in this proceeding on July 3, 2017 to ensure that the prudent planning for, and acquisition of, clean energy resources is represented. On July 26, 2017, the Commission granted CCL's request to intervene.

On August 1, 2017 SCE&G announced its decision to cease construction of V.C. Summer nuclear units 2 and 3. That same day, SCE&G filed a petition for a "Prudency Determination Regarding Abandonment, Amendments to the Construction Schedule, Capital Cost Schedule and Other Terms of the BLRA Orders for the V.C. Summer Units 2 & 3 and Related Matters," which the Commission assigned to Docket 2017-244-E. SCE&G also filed a notice of intent to file a request for revised rates under the Base Load Review Act ("BLRA"), which the Commission assigned to Docket 2017-246-E.

Following a motion by the Office of Regulatory Staff ("ORS") to dismiss SCE&G's petition and notice of intent, and following requests by several public officials for an opportunity to review the decisions leading to the abandonment of the new nuclear project, SCE&G on August 15, 2017 withdrew the petition and notice. SCE&G has reserved the right to refile petitions related to the abandonment of the project and to request revised rates.

On September 26, 2017, the ORS filed a Request for Rate Relief pursuant to S.C. Code Ann. § 58-27-920, asking the Commission to order SCE&G to immediately suspend collection of all rates revised under the Base Load Review Act ("BLRA"), and—if the BLRA is amended, repealed or declared unconstitutional—to order SCE&G to cease and desist from collecting revised rates and to refund prior revised rates to customers. The Commission assigned this request to Docket 2017-305-E. CCL petitioned to intervene in the proceeding to ensure its members' interest in promoting clean energy resources for customer bill relief is represented. On October 11, 2017, the Commission granted CCL's request to intervene.

POSITION AND ARGUMENT

I. The Relief Sought and Relevant Facts in Dockets 2017-207-E and 2017-305-E Overlap, and Coordinated Discovery Will Promote Efficiency.

CCL agrees with the Commission's statement in Order No. 2017-637-E that "the operative facts and the relief sought in the [Dockets 2017-207-E and 2017-305-E] are similar." The Commission should therefore coordinate discovery for the sake of efficiency.

In both proceedings, the central relief sought is the determination of appropriate rates to be charged to SCE&G customers and the remediation of any inappropriate rate increases should the Commission and/or a court of competent jurisdiction find that the increases were: 1) the result of imprudent acts or omissions by SCE&G, or 2) imposed pursuant to an unconstitutional statute. Parties in both cases will need to engage in discovery to present evidence as to the prudence of acts and omissions and costs incurred by SCE&G in connection with the nuclear project considering the information available at the time. Discovery should illuminate the prudence of the decision to abandon the project and the timing of that decision given least-cost efficiency and renewable energy alternatives available to SCE&G. Discovery is essential to ascertain what SCE&G knew about the viability of the nuclear project at various points over the course of the project and to assess the prudence of its resource planning and acquisition throughout the management of the project. Without discovery, it will not be possible to determine what costs are appropriate to pass through to customers in rates and/or what SCE&G should be required to do to mitigate previous rate increases.

Further, S.C. Code Ann. § 58-27-920—the statute that governs the proceeding in Docket 2017-305-E—specifically states that an "investigation" is necessary to gather evidence as to the appropriate rate that SCE&G should charge. This undercuts SCE&G's argument in its Response

to the Commission Request in Order No. 2017-637 at 3, that Docket 2017-305-E raises "purely legal arguments" and will support only limited discovery.

Given that Dockets 2017-207-E and 2017-305-E involve overlapping requests for relief and will involve discovery on the same issues, the commission should coordinate the two dockets. S.C. Code Ann. Regs. 103-840. This will not prejudice SCE&G if the Commission specifies, as it should, that there can be no duplication of discovery in the various V.C. Summer-related dockets. In fact, if discovery proceeds now, it will likely aid SCE&G. SCE&G has stated numerous times that it will refile a petition to address the abandonment-related issues that were raised in docket 2017-244-E. In that docket, SCE&G requested an expedited hearing schedule, suggesting that it was necessary to receive an income tax deduction in tax year 2017 to protect ratepayers. Unless SCE&G intends not to expedite its future petition—an approach that would apparently cost ratepayers additional money[1]—reviving pre-hearing discovery in docket 2017-207-E now would help all parties adhere to an accelerated schedule. SCE&G has also tacitly acknowledged that discovery in that future abandonment request and discovery in 2017-207-E and 2017-305-E significantly overlap through its suggestion that the future proceeding is the best docket in which to conduct discovery. SCE&G's Response to Order No. 2017-637 at 2. Coordination of discovery in dockets 2017-207-E and 2017-305-E now helps all parties efficiently prepare for litigation of the claims currently pending before the Commission and will

[1] CCL takes no position on whether it will be necessary to expedite a future abandonment request. In its petition in 2017-244-E, SCE&G did not provide sufficient support that an expedited decision was, in fact, necessary obtain tax benefits. CCL believes that SCE&G should be required to offer strong supporting evidence to prove that its claims about tax benefits are true, with detailed information about how different decision timelines would affect rate outcomes, before any hearing schedule is expedited.

allow discovery in the future abandonment request docket to proceed more quickly because it can be limited to topics that were not supported in 207-E and 305-E.

II. Coordinating Discovery Will Aid in the Just and Timely Resolution of the Pending Actions.

As noted in Commission Order No. 2017-637, Rule 1 of the South Carolina Rules of Civil Procedure instructs that the determination of every action should be "just, speedy and inexpensive." The Sierra Club's complaint has been pending before the Commission for almost four months while significant claims for relief remain pending. SCE&G's customers continue to pay the highest monthly bills of any medium-to-large investor-owned utility in the nation.[2] Significant questions about the prudence of least-cost efficiency and renewable generation also remain, with critical implications for the State's resource mix and the cost of SCE&G's bills going forward. Coordinated discovery in Dockets 2017-207-E and 2017-305-E should move forward in the interest of "substantial justice and due process." Order No. 2017-637. SCE&G's suggestion that the Commission should stay discovery and further proceedings until SCE&G files a future petition for review of its abandonment decision is especially offensive to these goals, *see* SCE&G's Petition for Rehearing and Reconsideration of Order No. 2017-637 at 5, as it would allow SCE&G to completely control the timing of the litigation filed against it.

With substantial justice and due process considerations in mind, the Commission should also instruct parties to adhere to the process already set out in Commission Rules for objecting to discovery requests. *See* S.C. Code Ann. Regs. 103-833. In its Petition for Rehearing and Reconsideration at 3-4, SCE&G suggests that the Commission should cordon off whole areas of questioning before discovery has even begun. The Commission's rules set out a process for

[2] Ranking of IOUs serving more than 100,000 customers, based on EIA Form 861 data.

objecting to discovery requests, and SCE&G's apparent eagerness to object to requests is further evidence that the process may be long and should therefore start as soon as possible. CCL would also support other measures—for example, interim deadlines for serving requests, objecting to requests, and resolving disputes—to ensure that discovery proceeds in an adequate, orderly manner; discovery could be wide-ranging due to the secrecy that has enshrouded SCE&G's decision-making over the last nine years.

CONCLUSION

For all of these reasons, CCL respectfully asks that the Commission revive pre-hearing discovery in Docket 2017-207-E and coordinate it with discovery in Docket 2017-305-E.

Respectfully submitted this 16th day of October, 2017.

s/ J. Blanding Holman, IV
SC Bar No. 72260
Southern Environmental Law Center
463 King Street, Suite B
Charleston, SC 29403
Telephone: (843) 720-5270
Fax: (843) 414-7039

Attorney for Petitioner South Carolina Coastal Conservation League

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I certify that the following persons have been served with one (1) copy of the foregoing Brief by electronic mail and/or U.S. First Class Mail at the addresses set forth below:

Belton T. Zeigler
Womble Carlyle Sandridge & Rice, LLP
1727 Hampton Street
Columbia, SC 29201

K. Chad Burgess
SCE&G Co. / SCANA Corp.
MC C222
220 Operation Way
Cayce, SC 29033-3701

Shannon B. Hudson
Jeffrey M. Nelson
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

Robert Guild
314 Pall Mall
Columbia, SC 29201

Frank R. Ellerbe, III
Sowell Gray Robinson
Post Office Box 11449
Columbia, SC 29211

John H. Tiencken, Jr.
Paul J. Conway
Tiencken Conway, LLC
234 Seven Farms Drive, Ste. 114
Charleston, SC 29492

Michael N. Couick
Christopher R. Koon
The Electric Cooperatives of South Carolina, Inc.
808 Knox Abbott Drive
Cayce, SC 29033

James R. Davis
J. Davis Law Firm, P.C.
BB&T Plaza, Suite 211B
234 Seven Farms Drive, MB#16
Daniel Island, SC 29492

Michael T. Rose
Mike Rose Law Firm, P.C.
406 Central Avenue
Summerville, SC 29483

W. Andrew Gowder Jr.
Austen & Gowder, LLC
1629 Meeting Street, Suite A
Charleston, SC 29405

This 16th day of October, 2017.

s/ Rachel Pruzin